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May 26, 2006

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 23, 2004

Case Number: TSO-0114

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the Individual) to possess an access authorization under the Department of Energy (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."^{1/} A Local Security Office refused to grant the Individual's access authorization application pursuant to the provisions of Part 710. As discussed below, after carefully considering the record before me in light of the relevant regulations, it is my decision that the Individual's access authorization be granted.

I. Background

The Individual is employed by a contractor at a DOE facility. The Individual was interviewed by a Personnel Security Specialist as part of an investigation regarding his eligibility for a security clearance. DOE Exhibit (DOE Ex.) 4-1 at 10. The Individual was subsequently referred to a DOE consultant psychiatrist (DOE Psychiatrist). The DOE Psychiatrist interviewed the Individual and diagnosed him as a user of alcohol habitually to excess and as alcohol dependent. DOE Ex. 2-1 at 29. The DOE Psychiatrist's opinion was based on the interview, the Individual's Personnel Security File, and an earlier psychiatric evaluation conducted in August 2002. The DOE Psychiatrist further opined that the Individual had not demonstrated sufficient evidence of reformation or rehabilitation. *Id.* The DOE Psychiatrist found that the Individual was suffering from alcohol dependence, "which causes, or may cause a significant defect in his judgment or reliability." *Id.*

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to from time to time in this Decision as access authorization or security clearance.

Because the derogatory information concerning the Individual had not been resolved, the Local Security Office obtained authority to initiate this administrative review proceeding. The Local Security Office then issued a Notification Letter to the Individual, citing the diagnosis of alcohol dependence as derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(j) (Criterion J).^{2/} The Local Security Office also cited this diagnosis as derogatory information creating a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(h) (Criterion H).^{3/} Also, based upon the DOE Psychiatrist's evaluation along with the PSI, the Local Security Office found that it possessed derogatory information that created a substantial doubt as to the Individual's eligibility for an access authorization under 10 C.F.R. § 710.8(k) (Criterion K),^{4/} under 10 C.F.R. § 710.8(f) (Criterion F),^{5/} and under 10 C.F.R. § 710.8(l) (Criterion L).^{6/} The derogatory information concerning Criteria F, K, and L centers on the Individual's drug use and his failure to report it either during his PSI or on his Questionnaire for National Security Position (QNSP). While he denied using illegal substances during the

^{2/} Criterion J refers to information indicating that an individual has "[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j).

^{3/} Criterion H refers to information indicating that an individual has "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h).

^{4/} Criterion K refers to information indicating that an individual "trafficked in, sold, transferred, possessed, used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 (such as marijuana, cocaine, amphetamines, barbiturates, narcotics, etc.) except as prescribed or administered by a physician licensed to dispense drugs in the practice of medicine, or as otherwise authorized by Federal law."

^{5/} Criterion F refers to information indicating that an individual "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire, a Questionnaire for Sensitive (or National Security) Positions, a personnel qualifications statement, a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31."

^{6/} Criterion L refers to information indicating that an individual "engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security. Such conduct or circumstances include, but are not limited to, criminal behavior, a pattern of financial irresponsibility, conflicting allegiances, or violation of any commitment or promise upon which DOE previously relied to favorably resolve an issue of access authorization eligibility."

PSI and on the QNSP, he did admit to the DOE Psychiatrist that he had used both marijuana and cocaine within a month of his interview with the DOE Psychiatrist. Further, the derogatory information concerning Criterion L is based upon information that the Individual drove his vehicle without proof of insurance, that he was cited for disregarding traffic regulatory signals, and that he was cited for operating a motor vehicle with a revoked driver's license.

Upon receipt of the Notification Letter, the Individual requested a hearing. The DOE transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case. 10 C.F.R. § 710.25(a), (b). I convened a hearing in this matter as prescribed by the DOE regulations. 10 C.F.R. § 710.25(g).

At the hearing, the Individual was represented by an attorney. He offered his own testimony as well as the testimony of his Alcoholics Anonymous (AA) sponsor, who is a lifelong friend, another friend who also attends AA, and a co-worker. The Local Security Office presented one witness, the DOE Psychiatrist. The local DOE Office also entered nine exhibits into the record.

II. Standard of Review

Under Part 710, DOE may suspend an individual's access authorization where "information is received that raises a question concerning an individual's continued access authorization eligibility." 10 C.F.R. § 710.10(a). After a question concerning an individual's eligibility for an access authorization has been properly raised, the burden shifts to the individual who must come forward with convincing factual evidence that "the grant or restoration of access authorization to the individual would not endanger the common defense and security and would be clearly consistent with the national interest." See 10 C.F.R. § 710.27(a).

In considering the question of the Individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the Individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors.

After consideration of all the relevant information in the record, I conclude that the security concerns raised by the derogatory information have been mitigated. Consequently, it is my decision that the Individual's access authorization should be granted.

III. Findings of Fact

The derogatory information concerning Criterion J centers on the Individual's diagnosis of alcohol dependence. Such a diagnosis raises security concerns. In response to the concerns, the Individual maintains that he has changed his lifestyle and no longer consumes alcohol. The underlying facts that raised the security concerns in this case are not in dispute.

The Local Security Office interviewed the Individual in July 2002 as part of an investigation for his access authorization. Based on the interview, the Local Security Office concluded that he should be evaluated by a DOE Psychiatrist. DOE Exhibit 8 (DOE Ex.). In reaching this decision, the Personnel Security Specialist relied on the Individual's admission that he had been arrested for DWI twice and that he had participated in three rehabilitation programs. Notification Letter dated December 1, 2003.

Subsequent to interviewing the Individual, the DOE Psychiatrist wrote an evaluative report describing his findings. DOE Ex. 2-1. The report states that the DOE Psychiatrist examined the Individual and ordered a number of laboratory tests. Most of the test results were normal, though the Individual's GGT liver enzyme was elevated, confirming the DOE Psychiatrist's finding that the Individual is a habitual user of alcohol to excess. *Id.* at 23. Based upon the examination and his review of the DOE records, the DOE Psychiatrist determined that the Individual met more than one of the diagnostic criteria of the Diagnostic and Statistical Manual, 4th Edition (DSM-IV), for "Alcohol Dependence." *Id.* at 24-25. In the Report, he also opined that the Individual is a user of alcohol habitually to excess. *Id.* at 26.

The DOE Psychiatrist further found that the Individual had not shown adequate rehabilitation. He recommended a two-year period for reformation and rehabilitation. *Id.* at 27. The DOE Psychiatrist recommended that the Individual attend AA at least once a week for a minimum of one year followed by another year of complete abstinence. *Id.* Alternatively, the Individual could complete a minimum of 50 hours of a professionally led substance abuse treatment program for a minimum of six months followed by at least one and one half years of abstinence. *Id.*

IV. The Hearing

At the hearing, the DOE Psychiatrist confirmed his diagnosis. Transcript of Hearing (Hearing Tr.) at 11-27. Pursuant to the DSM-IV, for someone to be diagnosed with alcohol dependence, an individual must meet three criteria from a list of criteria for that illness. The DOE Psychiatrist found during the mid 1980s when he was a student at a local university, that the Individual met three diagnostic criteria outlined in the DSM-IV TR. DOE Ex. 2-1 at 24. The DOE Psychiatrist reiterated his opinion that the Individual would need to be abstinent for two years, along with attendance at either AA or a professionally led program, to make a finding of reformation or rehabilitation. Hearing Tr. at 21.

The Individual's AA sponsor and friend testified for the Individual. He is a counselor and supervisor at a hospital for individuals with substance abuse. Hearing Tr. at 27. He works in the adult chemical dependency unit. *Id.* at 28. He has been friends with the Individual since junior high school, although when they attended college they spoke infrequently. *Id.* at 30. The sponsor testified that in the winter of 2002 they spoke about AA and shortly thereafter, probably in the beginning of 2003, the Individual asked him to become his sponsor. *Id.* at 31-32. Although they do not live in the same town, they speak a couple of times each week. The sponsor has provided packets of information to the Individual and is available if the Individual has a crisis. *Id.* at 32-33. The sponsor testified that the Individual did have a relapse in early 2003 that the sponsor attributed to overconfidence. *Id.* at 40. The Individual now avoids situations where alcoholic beverages might be consumed, such as watching football games on television or participating in a band where the other members were known to not be sober. *Id.* at 51-52. The sponsor testified that the Individual is committed to his sobriety because he realizes that, for him, drinking leads to death. *Id.* at 50.

A friend of the Individual's testified. He stated that he has known the Individual since the early 1990s. Hearing Tr. at 57. Approximately three years previously, the friend quit associating with the Individual because the friend stopped drinking. *Id.* at 57-58. Then, in early 2003, the friend encountered the Individual at an AA meeting. *Id.* The friend testified that they occasionally attended meetings together. *Id.* Even when they do not attend together, he often sees him at a meeting, at least once a week and sometimes more often. *Id.* at 59. The friend testified that the Individual has been sober since early 2003. *Id.* at 60.

A co-worker of the Individual testified on his behalf. The co-worker stated that they walk almost every day during lunch. They pray while they walk and talk about his alcohol problem. *Id.* at 62. The co-worker testified that he is a deacon at his church and he and the Individual talk about spirituality. *Id.* He believes the Individual is sincere in their discussions. *Id.* The co-worker testified that the Individual told him about his alcohol problem. *Id.* at 61. He testified that he is confident that the Individual has stopped drinking. *Id.*

The Individual testified on his own behalf. He began by saying that his interview with the DOE Psychiatrist changed his life and that it probably saved his life. Hearing Tr. at 63. About seven to ten days after the interview, he attended his first AA meeting. *Id.* at 64. He said that at the meeting someone suggested a program called 90 meetings in 90 days. *Id.* The Individual testified that he attended about 75-80 meetings in 90 days. He asked someone to be a temporary sponsor. *Id.* The Individual testified that since the first 90 days, he has attended three to four AA meetings a week. *Id.*

The Individual also testified that he had a relapse in March 2003 when he went out with friends of his brother whose funeral they had attended a couple of months previously. *Id.* He went on to testify that he has not had a drink since March 2003. The death of his second brother occurred during the Individual's sobriety and did not cause him to consume alcohol. *Id.* at 68.

The Individual testified that his sobriety is the most important thing to him. The Individual testified that both of his brothers died of alcohol-related causes. He believes that if he drinks again, he will die. *Id.* In this regard, he associates with people do not drink. When in a social situation where alcohol is being offered, he tells people that he is a recovering alcoholic. *Id.* at 78. His family and friends know of his problem and do not offer him alcohol. The Individual testified that he was truthful with the DOE Psychiatrist, but not at the PSI or with the DOE people prior to that. *Id.* at 65.

The DOE Psychiatrist was recalled after listening to all the testimony. He stated that he believes the Individual shows adequate evidence of rehabilitation and reformation. Tr. at 80. He opined that the Individual's risk of relapse is 10 percent or less over the next five years. *Id.* He stated that he believed the Individual's participation in AA is genuine and sincere. *Id.* at 81. He continued that the dishonesty issue is an element of someone who is actively drinking and very common.

When somebody is actively drinking they tend to minimize other substance-related questions that they're asked, when is the last time you used, how much you used, that sort of thing, very, very common. I do not believe that he is a dishonest person, and I don't believe that, in my opinion, his dishonesty issue is [a] factor now that he's showing adequate evidence of rehabilitation or reformation.

Id. at 81-82. The DOE Psychiatrist continued that there is nothing about the Individual that leads the DOE Psychiatrist to believe that he has a character flaw or some other mental problem that would cause him to be dishonest. The dishonesty issue was a result of his alcohol problem.

V. Findings and Conclusions

After reviewing the testimony presented in this case as well as the other evidence contained in the record, I find that the Individual does have an alcohol problem that raises a security concern. However, I find that the Individual's more than two years of sobriety and the other evidence in this proceeding provide adequate evidence of rehabilitation or reformation. I believe the Individual is sincere in his commitment to Alcoholics Anonymous. His witnesses have confirmed that commitment. His sponsor indicated that the Individual realizes that, for him, drinking will lead to his death. His friend testified that the Individual has been open about his drinking and they attend AA together. When they do not attend together, the friend often sees the Individual at a meeting alone. The co-worker testified that the Individual has been open and honest about his alcohol problem and his commitment to AA. At the Hearing, the DOE Psychiatrist opined that the Individual is showing adequate evidence of rehabilitation and reformation. He continued that he defines rehabilitation and reformation to mean his risk of relapse over the next five years is low, which he estimated at 10 percent

or less. *Id.* at 80. Further, the DOE Psychiatrist does not believe dishonesty is presently an issue. Therefore, Criteria H and J have been mitigated.

Furthermore, the Individual's rehabilitation and reformation of the alcohol dependence concern has mitigated the other concerns raised under Criteria F, K, and L. I fully believe the concerns raised under Criteria F, K, and L occurred because of his drinking, including his abuse of illegal drugs. As the DOE Psychiatrist testified, a person who is actively drinking will minimize his use of other illegal substances use. He will also be dishonest with himself and others. I absolutely agree. Since the individual is no longer drinking or using illegal drugs and is committed to his sobriety, I believe that the other concerns have been mitigated.

In sum, I was convinced by the testimony of the Individual's witnesses. I am convinced that he has maintained his sobriety for more than two years. Further, there is no conflicting testimony since the DOE Psychiatrist also believes the Individual to have shown adequate evidence of rehabilitation and reformation. To the extent the DOE Psychiatrist's report raised a security concern, I find that concern has been mitigated. Further, the Individual's sobriety has mitigated the concerns raised under Criteria F, K, and L, as the DOE Psychiatrist testified at the Hearing.

IV. Conclusion

Upon consideration of the record in this case, I find that there is evidence that raises a doubt regarding the Individual's eligibility for a security clearance. However, I find sufficient evidence in the record to mitigate any concern raised. Therefore, I conclude that restoring the Individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Consequently, it is my decision that the Individual's access authorization should be restored.

Janet R. H. Fishman
Hearing Officer
Office of Hearings and Appeals

Date: May 26, 2006